

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Liberty National Life Insurance Company; Brown-Service Funeral Homes Company, Inc.; and Service Insurance Company of Alabama, U.S. District Court, N.D. Alabama, 1954 Trade Cases ¶67,801, (Jun. 29, 1954)**

United States v. Liberty National Life Insurance Company; Brown-Service Funeral Homes Company, Inc.; and Service Insurance Company of Alabama.

1954 Trade Cases ¶67,801. U.S. District Court, N.D. Alabama, Southern Division. Civil No. 7719-S. Filed June 29, 1954. Case No. 1200 in the Antitrust Division of the Department of Justice.

### **Sherman Antitrust Act**

**Consent Decree—Practices Enjoined—Owning or Operating Funeral Business— Interest in Burial Insurance Company or Funeral Merchandiser—Joint Officers or Directors.**—A life insurance company and two subsidiaries consented to the entry of a decree enjoining them from (1) owning or operating any funeral business in Alabama except where there was no acceptable funeral director available, (2) acquiring any interest in any burial insurance company or funeral merchandiser in Alabama, or (3) having any joint officers, directors, or employees with any funeral director, burial insurance company or funeral merchandiser in Alabama.

**Consent Decree—Practices Enjoined—Funeral Service Contracts.**—A consent decree enjoined a life insurance company and two subsidiaries from entering into any new funeral service contract or claiming any rights under any existing funeral service contract with any funeral director in Alabama which (1) prevented such director from selling funeral merchandise to or performing funeral services for any other person, (2) limited or restricted the number of funeral homes which such director could own or operate, (3) restricted the funeral director from buying funeral merchandise from any other person, and (4) required the funeral director to buy funeral merchandise from any particular person.

**Consent Decree—Specific Relief—Exclusive Territory Arrangements.**—A life insurance company and two subsidiaries consented to the entry of a decree enjoining them from entering into any new funeral service contracts which would give a funeral director an exclusive territory for the burial of their policy holders. The defendants were ordered to cancel any such provision in existing funeral service contracts, as soon as was legally possible. Such exclusive territories were required to be canceled at the end of the initial term specified in the existing contracts. The decree further provided that when the defendants were free to appoint more than one contract funeral director in any area, they were required to publish, for the area concerned, reasonable, uniform, and nondiscriminatory standards of acceptability for contract funeral directors who might wish to do business for the defendants in that area. The defendants were required upon request to enter into a funeral service contract with any funeral director qualified in accordance with such published standards who might wish to furnish funeral services for policy holders of the defendants.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, Worth Rowley, Fred D. Turnage, John H. Waters, William D. Kilgore, Jr., Harry N. Burgess, Charles F. B. McAleer, and William H. McManus.

For the defendants: Spain, Gillon & Young, Frank E. Spain.

### **Final Judgment**

SEYBOURN H. LYNNE, District Judge [ *In full text* ] : Plaintiff, United States of America, having filed its complaint herein on June 29, 1954, Liberty National Life Insurance Company, Brown-Service Funeral Homes Company, Inc., and Service Insurance Company of Alabama, having been made parties defendant herein; the defendants having appeared and filed their answers to said complaint denying the substantive allegations thereof; and the plaintiff and said defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issue,

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of all the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I

[ *Jurisdiction* ]

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states a cause of action against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act, and Section 3 of the Clayton Act (15 U. S. C. 1, 2 and 14).

II

[ *Definition* ]

As used in this Final Judgment:

- (A) "Person" shall mean any individual, partnership, firm, corporation, association, trustee or any other business or legal entity;
- (B) "Funeral director" shall mean any person engaged in the undertaking business, including the conducting of funerals, and preparation for burial and the burial of deceased human beings;
- (C) "Burial insurance" shall mean insurance under which the benefits are payable in merchandise and services incident to burial;
- (D) "Funeral merchandise" shall mean all materials and supplies, including, but not limited to, caskets, outside boxes, vaults, hearses, embalming fluids, suits, dresses, cosmetics, equipment and instruments, used in the process of a funeral and of preparing for burial and burying the body of a deceased;
- (E) "Funeral services" shall mean all work done or acts performed by a funeral director in the process of a funeral including the preparation and burial of the body of a deceased;
- (F) "Funeral service contract" shall mean any contract, agreement or understanding whereby a funeral director agrees to furnish the necessary funeral merchandise and funeral services, or either of them, for the burial of any policyholder of burial insurance.

III

[ *Applicability* ]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, officers, directors, agents, employees, successors and assigns, and to all other persons acting or claiming to act under, through or for said defendant. For the purpose of transactions between themselves, all defendants and all wholly-owned subsidiaries of any defendant shall be deemed to be one person.

IV

[ *Operation of Funeral Business Restrained* ]

Each of the defendants is enjoined and restrained from:

- (A) Acquiring, establishing, owning or operating any funeral business in Alabama; provided, however, nothing in this subsection shall prevent such defendant from acquiring, establishing, owning or operating one funeral business in any given county in Alabama where:
  - (1) there is no acceptable funeral director in such area available to furnish funeral services for such defendant; or
  - (2) there is no acceptable funeral director in such area willing to furnish funeral services for such defendant at rates comparable to rates paid by the defendant to other funeral directors in Alabama;

(B) Acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, and from holding or exercising after such acquisition, ownership or control of the business, physical assets (other than goods bought or sold in the normal course of business) or good will or any part thereof, or any capital stock of securities of or evidence of indebtedness issued by, any person then engaged in writing, issuing or selling burial insurance in Alabama or the manufacture, distribution or sale in Alabama of funeral merchandise to jobbers or funeral directors in Alabama; provided, however, that this Final Judgment shall not be construed to prevent any defendant from foreclosing or otherwise realizing on any security held by such defendant at the time of the entry of this Final Judgment given in connection with any loan made by such defendant prior to the date of this Final Judgment;

(C) Causing, authorizing or permitting any of the officers, directors or employees of such defendant to serve as an officer, director or employee of any funeral director in Alabama (subject to the provisions of subsection (A) of this Section IV) or any other person engaged in Alabama in the manufacture, distribution or sale of funeral merchandise or the writing, issuing or sale of burial insurance.

## V

### [ Restrictions on Funeral Service Contracts]

Each of the defendants is enjoined and restrained from:

(A) Hereafter engaging in Alabama in the business of manufacturing, distributing or selling funeral merchandise; provided, however, that nothing in this Final Judgment shall prevent any defendant from manufacturing or acquiring by purchase and consigning to its contract funeral directors caskets, vaults, outside boxes, suits and dresses for use solely in the burial of policyholders of such defendant;

(B) Appointing or designating any funeral director in Alabama as an agent for the sale of burial insurance or for the collection of premiums thereon;

(C) Hindering, restricting, limiting or preventing, or attempting to hinder, restrict, limit or prevent, any funeral director in Alabama from:

(1) purchasing any funeral merchandise from any person, except as provided in subsection (A) of this Section;

(2) performing or contracting to perform funeral services for or on behalf of any other person including specifically, any policyholder of burial insurance and any other burial insurance company;

(D) Entering into, renewing or transferring any funeral service contract, or entering into any future contract, agreement or understanding, which has the purpose or effect of limiting or restricting the contracting funeral director in furnishing or offering to furnish funeral services for policyholders or any other person within a given area in Alabama or which purports to restrict or prevent any other funeral director with whom any such defendant may have a funeral service contract from furnishing funeral services for policyholders or any other person in any such area.

Nothing contained in this Section V shall be deemed to deprive any defendant of its rights, if any, to cancel any funeral service contract.

## VI

### [ Restrictions on Funeral Directors]

Each of the defendants is enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement, understanding, plan or program, directly or indirectly, with any funeral director in Alabama which:

(A) Hinders, restricts or prevents any such director from selling funeral merchandise to or performing funeral services for any other person;

(B) Limits or restricts the number of funeral homes which such director may own or operate;

- (C) Hinders, restricts or prevents the funeral director from buying funeral merchandise from any person;
- (D) Requires the funeral director to buy funeral merchandise from any designated person.

## VII

### [ *Exclusive Territory Arrangements* ]

(A) Each of the defendants is ordered and directed:

(1) Upon expiration of the initial term specified in any funeral service contract, existing on the date of entry of this Final Judgment, and before renewing such contract, to terminate and cancel any provision of such contract which grants to the funeral director the exclusive right to provide funeral services for policyholders of such defendant in any area in Alabama or which prevents such defendant from appointing any other funeral director in such area; provided, however, that nothing in this Final Judgment shall prevent any defendant from adhering to any such provision of an existing funeral service contract during the initial term specified therein;

(2) To terminate and cancel each of its funeral service contracts existing on the date of the entry of this Final Judgment whenever, according to the terms thereof, such defendant shall have the legal right to do so;

(3) Upon the termination, cancellation or expiration of each of the existing funeral service contracts of such defendant:

(a) To publish for the area concerned reasonable, uniform and non-discriminatory standards of acceptability for contract funeral directors who may wish to do business in such area;

(b) Upon request, to enter into a funeral service contract with any funeral director qualified in accordance with such published standards who may wish to furnish funeral services for policyholders of the defendants within such area;

(4) To take such steps as may be necessary to inform its policyholders, generally, of their right to call upon any contract funeral director of the defendant to furnish funeral services regardless of location.

(B) Whenever, after the date of the entry of this Final Judgment, the consent of any defendant is a condition to the renewal, extension or transfer of any existing funeral service contract, then, and in that event, the defendants are jointly and severally enjoined and restrained from consenting to any such renewal, extension or transfer of any such funeral service contract any of the terms of which are inconsistent with any provision of this Final Judgment;

(C) In any suit or proceeding which may hereafter be brought by the plaintiff against the defendants or any of them arising out of, or based upon, the terms of Sections IV(A) and VII(A) (3) of this Final Judgment the burden of proof shall be upon the defendant or defendants to establish, to the satisfaction of this Court, that any funeral director considered by the defendant or defendants to be not acceptable is, in fact, not acceptable in accordance with the applicable uniform, reasonable and non-discriminatory standards of acceptability published by defendants.

## VIII

### [ *Amending of Contracts* ]

Defendants are ordered and directed forthwith upon entry of this Final Judgment to furnish a copy thereof to each funeral director with whom any such defendant may have a funeral service contract, and to amend each such contract so as to provide that such funeral director may, at any time:

(A) Purchase and use any funeral merchandise from any person, provided, however, that a defendant may retain the right to furnish to such funeral director caskets, vaults, outside boxes, suits and dresses to be used solely for the burial of policyholders of such defendant;

(B) Perform or contract to perform funeral services for or on behalf of any other person, including, specifically, any policyholder of burial insurance and any other burial insurance company.

IX

[ *Inspection and Compliance* ]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office, be permitted: (A) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and (B) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

Upon such request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

[ *Retention of Jurisdiction* ]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the purpose of enforcement of compliance therewith and the punishment of violations thereof.